Supreme Court, U. S.
FILED
AUG 21 1975
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DONALD H. STEPHENS,

Appellant,

VS.

L. D. HOWLE,

Appellee.

CASE NO.
74-1475

MOTION TO DISMISS

WARREN W. WILLS, JR.
640 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303

MOTION TO DISMISS

Appellee moves to dismiss the appeal herein on the following grounds:

(a) The appeal is not within the jurisdiction of this Court, because it is not taken in conformity to statute or to these rules. The appeal herein is from a judgment entered December 5, 1974. The appeal in this Court was filed May 23, 1975. The appeal is thus not in conformity with Rule 13 of this Court. Further, although Appellant cites 28 U.S.C. Section 1257(2) as authority for his appeal, the decision below is not one rendered in a cause where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision was not in favor of the validity of any questioned statute.

(b) The "federal question" sought to be reviewed was not timely or properly raised, and was not expressly passed on. Neither the constitutionality of state statutes nor the construction of state statutes was presented upon the trial of the case below or in the appeal therefrom. The decision of the Court of Appeals of Georgia does not expressly pass on any federal question and the Motion for Rehearing filed in the Court of Appeals of Georgia was denied without elaboration.

Warren W. Wills, Jr.
Attorney for Appellee

CERTIFICATE OF SERVICE

This shall certify that I have this day served Donald H. Stephens, Appellant, with three printed copies of the foregoing Motion to Dismiss by depositing same in the United States Mail with First Class postage prepaid, addressed to Donald H. Stephens, Route 3, Box 18, Sandersville, Georgia, 31082.

This 19th day of August, 1975.

Warren W. Wills, Jr.
Attorney for Appellee